



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Jessica Karls-Ruplinger
Legislative Council Acting Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 19-006

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

In the rule summary’s listing of statutory authority, the citation to s. 85.63, Stats., should more precisely cite to sub. (2) of that section, and the citation to s. 227.11, Stats., should more precisely cite to sub. (2) (a) of that section. [s. 1.02 (2m) (a), Manual.]

2. Form, Style and Placement in Administrative Code

a. Throughout the rule, the department should consider replacing the term “will” with either “shall”, to denote a mandatory or absolute duty or directive, or “may”, to denote an optional or permissible privilege, right, or grant of discretionary authority. The rule should also clearly identify the person subject to each provision. [s. 1.01 (2), Manual.]

b. Throughout the rule, the department should use proper capitalization. For example, it is not necessary to capitalize the term “department”. [s. 1.01 (4), Manual.]

c. In ss. Trans 58.04 and 58.05, the subunits should be presented with introductory identifying material that ends in a colon. For example, a sentence could be inserted at the end of the material in s. Trans 58.04 (intro.) to specify that “All of the following procedures shall apply to the active system:”. [s. 1.03 (3), Manual.]

d. The rule summary’s plain language analysis states that the basis for the fee amount is to generate sufficient revenue to service, update, and replace the active system’s equipment, hardware, and software on an ongoing basis. However, this methodology for determining the fee

amount is not included in the text of the proposed rule. The department could consider describing the basis for the fee determination in the text of the rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The proposed rule defines the term “active system” but instead uses the term “Active Reference Surveying Reference Station System”. The rule should use consistent terms for clarity.

b. In s. Trans 58.02 (1), (2), and (4), the department should avoid using the word “the” before the defined term.

c. In s. Trans 58.02 (4), the department should consider replacing the phrase “consists of” with either “means” or “includes”.

d. In s. Trans 58.02 (8), consider revising the definition of “user” to provide a meaningful distinction from the term “subscriber”. For example, a “user” could be defined as an individual subscriber or an individual within an organizational subscriber. Also, the word “above” should be removed.

e. Section Trans 58.03 does not appear to have any legal effect. The department should consider whether having this statement in the rule is necessary. Alternatively, the department could consider including the substance of the Note as a directive in the rule itself for how the department determines the fees. If so, consider including the description from the rule summary’s plain language analysis of the basis for determining the fee.

f. For clarity, the department could consider rewriting ss. Trans 58.05 and 58.06 as follows:

Trans 58.05 Active Surveying Reference Station System Maintenance.

- (1) The department shall do all of the following:
 - (a) Carry out system maintenance for the active system.
 - (b) Fund maintenance and upgrade costs of the active system from subscriber fees.
 - (c) Provide notice by email to subscribers as soon as practicable when down-time for maintenance to the active system is planned.
- (2) The department may not provide a credit or refund to a subscriber for instances when the active system is inoperable due to maintenance.

Trans 58.06 Active Surveying Reference Station System Fee Structure.

- (1) The department shall charge fees to use the active system at the following rates:
 - (a) The individual yearly rate is \$300 per subscriber per year.
 - (b) The organizational yearly rate is \$300 per year for the first five users in the organization plus \$150 per year for each additional user.

- (c) The individual monthly rate is \$50 per subscriber per year.
- (2) The department may not prorate the individual yearly rate or the organizational yearly rate under sub. (1) (a) or (b).
- (3) The following entities shall be exempt from paying a fee to use the active system:
 - (a) The department.
 - (b) An institution of higher education.
 - (c) If subject to a memorandum of agreement, the Iowa Department of Transportation.
 - (d) If subject to a memorandum of agreement, the Michigan Department of Transportation.
 - (e) If subject to a memorandum of agreement, the Minnesota Department of Transportation.
 - (f) A WISCORS Cooperative Partner.